

CONSTITUTIONAL LAW: A FUNDAMENTAL RIGHT AT THE THRESHOLD OF GLOBALIZATION

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Abstract

Constitutional law is a fundamental law which guarantees social order and perform system hamonisation of rule of law. Our country has had historically strong needs to fully respect the applicability of this fundamental right. The purpose of this paper is to bring reflection by a brief summary, some of the legal and historical stages of evolution of the science of constitutional law, reflected not only in our country but worldwilde. This research aims also to analyse the exercise of fundamental human rights foreseen in several charters and legal statute along the historical and juridical development of the society. The birth of the modern State together with the stage of development of our society, along with its updates has brought many conflicts within customary norms, imposing latter to fade out of sight of daily reality. However the reality of facts categorically rejects this belief and ready-generality of non western states that proved to be refractory what many have correctly defined as a pattern of "imperialism of human rights". To universalizing human rights, non west countries supported the idea that human rights should be considered in the content national and regional and even spatial relevant historical, religious and cultural organization, besides the idea that control over human rights it violates the sovereignty of states; as we say, the world is Arab, Asian and African countries to the same extent as "Western". Finally, we can say that the idea of a globalization of human rights, implicit utopia of the universalization that means overcoming national states, can more realistically put the idea of human rights that exclude the culturalpeculiarities of the peoples and that can have an effective statute, an effective system of protection, made available through the state apparatus instruments and bodies. In this content human rights are at the same time the value that express and reflect human desires and aspirations. As values, human rights represent goals and highest ideals, which, although not fully feasible, give the sense of social life.

Keywords: *Law, Constitution, Society, State, Constitutional Law.*

Human's fundamental rights as inalienable values

United Nation Declaration for Human Rights states in its first article a very important expression in which are guaranteed the rights of individuals: "All people are born free and with equal rights and dignity". All people without any distinction have some certain rights since we come into this life, called as Human Rights.

People's desires and aspirations can be expressed through human rights a potential values which protect and improve the free life. Human rights are also very significant when give meaning to human life because they represent the purposes and ideals of everybody.

The most known human rights are: human dignity, the right of speech, the right of equal treating and equality before law, the right of information, the freedom of meeting and collection, the freedom of being part of any party, the freedom of profession and work, the freedom of religious faith, the protection of home, the right of education, the right of protection by law, the right of living free in a free society.

It was a clause according to which the *civitas romanae* who weren't able to pay their debts or the obligations to Roman state became slaves (Cervati, 2009, 38). Another issue was the sold children to be used as slaves by the families who had big economic problems and this was the only possibility to earn any money. The slaves who had the most appreciation were the ones who came from Illyria because they were highly educated and for this reason they were kept by the very rich people including teachers, politicians and doctors.

The owners owned the slaves and their familiars and had the right to sell, buy and loan them as objects.

The slaves had similarity with Roman citizens and for this reason the Senatus Populus Romanun agreed to give the possibility to slaves through Lex Silla 61 B.C. to be distinguished from the others.

But Roman Empire didn't approve because if the slaves would know their real number they could rebel and create big problems to Roman state. When you take in consideration the

buildings of Acque-Ductus, Urbis and Arenea, it is seen that the most popular slaves were those of public buildings and these building were built by them to be used for public interests.

The basis in which was based the economical welfare in this empire was the labor power of the slaves. The slaves started to be better treated by the owners, which was a positive sign for their future treatment. Some of the slaves started to get a lot of privileges and comforts. In this way they were treated better than some Romans of first range called as Plebeians.

Another issue to be discussed is the possibility to be liberated from the owners. This right was exclusive only for the slaves of Roman Empire. These slaves could gain the liberty by buying themselves. The opportunity to gain liberty from their owners influenced the slaves to work more and to behave well. Also the judges via court decision could give liberation to slaves by giving roman nationality to them. These slaves didn't have the right to work in the public administration but, their children gained the roman nationality when they were born. Even these slaves gained liberation from their owners they had some restraints: when the slaves died their property was taken aback by their old owners.

The modern society had influenced the process of globalization

The human rights and freedoms are always seen as fundamental values for every individual. The fundamental rights cannot be referred only to a person or to a group of people, but to whole community or society. For this reason are called universal and not personal or based in certain groups. It is known that there are a lot of differences between the societies and cultures in world (Sorrentino, 2007).

Every individual has fundamental rights including the right to work in certain conditions. All the rights of a worker must be respected in order to take the best possible of worker's professional capability. The human rights are absolutely inalienable and for this reason they cannot be object of selling, buying or loaning as other things. All people have equal rights without any distinction of race, gender, national or political origin.

When people are born they enjoy equal rights and freedoms as an indivisible part of their life. It must be ensured the right to live free and without any discrimination. All people must enjoy

equal treatments including the right to be politically voted, elected and having the possibility to represent people in political relations.

The new international institution called as European Union created by this treaty was a clear democratic revolution that gave the opportunity to its citizens to request new legislation for different fields to develop the economic growth of their countries. These requests can be shown to the European Commission which is the direct institution to take in consideration the legislative changes in EU.

In this way for the first time would be respected the freedom of speech of European citizens in this important process which is vital for the future coexistence of European Union.

This new opportunity was called the initiative of European citizens to give them the possibility to give their contributions in the making-law process, in fact in the creation of new regulations inside European Union.

The Rule of Law and the guaranty of the human rights can be only ensured by an efficient constitution

The constitution is the highest law in a state to which are based all the other laws operating in a state. As we know the individual's freedoms and rights are guaranteed by law and in this part the highest law which has priority among the others in the constitution (Abdiu 2001, 25). The constitution is based on human values as dignity, respect, friendship and other vital values for the coexistence of the civil community.

The constitutional law is part of the public law which regulates the relations between state institutions and citizens in order to achieve public purposes that are in base of every constitution (Sorrentino 2007, 213-214). There are other divisions which are part of public law and have indirect link with constitutional law.

The creation of constitutional law has derived from the historical and political development of modern constitutions that are based on the guaranty of sovereignty for states, have constituted state institutions in function of public purposes, have guaranteed to civil society their fundamental rights and in other hand have obligated them to respect the law in order to live

free and secure in a modern society (Cervati 2001, 21). This evolution is become during the times in distinct profiles to express the permanent development of constitutional law.

The constitution aims to provide a well functioning and cooperating of state institutions for general welfare and public purposes. The constitutions can be found in every social phenomenon which is part of the legal system even it isn't directly linked with it as the religious constitutions or those with international character (Picardi 2007, 59).

The term constitution can be used in all judicial stages because it is the base for every legal system. Also, it can be understood in different meanings including here the order of a whole community or a group of persons (Sorrentino 2007, 59). But its real meaning is broader than we think: it is the only guaranty of the whole legal system and the all norms too.

In the center of the liberal revolutions happened in Europe was the term constitution which had a lot of importance in the new modern organization. Every state including the kingdoms or other empires was based on the principles and values mentioned in their constitutions. Liberal revolutions created modern states, but their real objective was the creation of a constitutional state or government. The science of constitutional law can be studied only by the historical view of its development (Tesauro 2005, 450-451).

The constitution and the constitutional law have their same points and cannot be separated from each other (Picardi 2008, 215-216). In order to get all elements of the studying of constitution is important to make modern researches, but always beginning from the past and continuing with its development during history. It is also important to study the all parts of the term constitution in order to get a complete meaning of its analysis.

Constitutional principles regarding human rights

The constitution of Albania is composed of important legal norms and procedures which regulate the basis of the social, legal and state order. The constitution is the most fundamental normative act of the state that has gained normative value which makes it more efficient regarding its norms. The legal norms provided in the constitution are not considered as usual legal norms, but as fundamental principles of law. For this reason, these principles are of high importance regarding the guaranty and protection of human rights.

The principle of the equality regarding human rights is significant as all human are equal, having equal rights deriving from the natural rights. The principle of equality implicates equality before law and equal protection by law, equality of opportunities and possibilities to exercise the rights, to enjoy the freedoms and to be active in public life, effective protection from the discrimination and from any other actions that simulates discrimination. In this context, it is accepted that there exists a direct relation between the principle of equality and discrimination. Both two principles implicate that a human must be treated in equal manner when is not discriminated and when is discriminated, is not treated in equal manner. The principle of equality seeks the stop of discrimination and equal treatment in rights for the all victims of serious violations of the human rights.

The principle of proportionality determines the limits of restrictive intervention of the legislator over some fundamental rights and freedoms. This principle is not provided clearly with this name in the constitution, but it emanates from the concept of legal restriction of the rights and freedoms provided in the article 17 of RA Constitution. The principle derives from the fundamental rights of the humans to be free from the intervention of the state power. But for the protection of the public interest, the intervention and restriction of the state institutions can be spread till the point it is permissible to not violate the fundamental human rights. This principle serves as a constitutional control measure against legislator about human rights' frame.

Conclusions

Finally, with this paper we are able to bring before students of legal sciences, particularly, the importance of constitutional law, its evolutions, the stages which have consolidated more this law arriving at a fundamental and inalienable law, but overall it is the only guaranty of the application of fundamental principles, even if many times very norms are only written in charters (not applied). There stands the role of the jurists and the researchers of this field to face with the concrete problem of finding the certain norm, its interpretation, application; so, as it is seen, it's a long and difficult work, but we (jurists) all together must try to make this legal science a 'permanent mine' for the good of our society.

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